

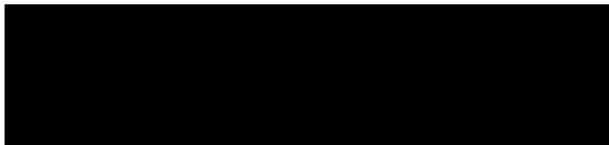
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAR 05 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastor and youth minister. Based on the results of an onsite visit to the petitioner's premises, the director determined that the petitioner had not established that it is operating as a bona fide nonprofit religious organization and that the beneficiary is qualified for the proffered position.

On appeal, counsel asserts that the director based her denial "on an inaccurate and dubious assessment of petitioner's religious denomination." The petitioner submits additional documentation in support of the appeal.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
- (III) . . . in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

The first issue is whether the petitioner has established that it operates as a bona fide nonprofit tax-exempt religious organization.

The regulation at 8 C.F.R. § 214.2(r)(16) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS [U.S. Citizenship and Immigration

Services] through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

With the petition, filed on March 31, 2010, the petitioner submitted documentation indicating that it was incorporated in the State of Florida on November 1, 2000. The petitioner also submitted a list of its members as well as several church programs or brochures that show the petitioner's address as that listed on its Form I-129, Petition for a Nonimmigrant Worker. None of these documents, however, are accompanied by an English translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the documents, the evidence is not probative and will not be accorded any weight in this proceeding.

In its March 22, 2010 letter submitted in support of the petition, the petitioner stated that it had an agreement with the [REDACTED] to use its facilities for church services. The church submitted a copy of an agreement with [REDACTED] that was valid from October 1, 2007 to September 30, 2008. The agreement indicated that the petitioner had use of the facilities of [REDACTED] at the following times:

- Sunday from 7:30pm to 10pm
- Monday from 8pm to 10pm
- Tuesday from 7:30pm to 9:30pm
- Friday from 10pm to 2am
- Saturday from 8pm to 11pm

The agreement also indicates that the petitioner had use of all rooms except the toddler room, nursery, offices and storage closets. The agreement did not provide for any extension of the agreement.

On November 1, 2010 and again on January 11, 2011 and January 12, 2011, immigration officers (IOs) visited the address listed by the petitioner on its Form I-129 for the purpose of verifying the petitioner's claims. The IOs reported that no one was present at the location on any of their three visits. The IOs stated that a small sign indicated that the petitioner held service on Saturday and Sunday at 7:30 pm. On the second visit, the IOs left a request for evidence (RFE) in the mailbox next to the church office; the IOs received no response to this request.

In denying the petition, the director outlined the IOs' report and stated:

The petitioner submitted correspondence on which it is claimed that the beneficiary will perform duties normally performed by a Pastor, which include conducting prayer meeting, worship services . . . as well as being in charge of Christian youth counseling with office hours generally from 3PM to 7PM. Obviously, a major discrepancy was identified. There appears to be very little or no religious activities at the location for [the petitioning organization] to support a full time religious worker, as evident from the site visits. The supporting documentation submitted upon the filing of the I-129 petition contradicts the findings encountered during the site visits, which strongly indicates that fraud is suspected. Data mining and open source checks did not show that [the petitioner] relocated to another location.

On appeal, counsel states that the timing of the IOs' visits is important as the petitioner's use of the church is limited by its lease, and the director's decision did not indicate the times that the IOs visited. Counsel also asserts that the petitioner was not authorized to use the church on January 12, 2011, a Wednesday, and on January 11, 2011, "the church was full of members" during the period the petitioner was authorized to use the church facilities, as the church was celebrating the birthday of the beneficiary's daughter. The petitioner submits a copy of the birth certificate of the beneficiary's daughter and photographs of what counsel states are of the birthday party held on January 11, 2011. The beneficiary also provides a statement in which he confirms the birthday party and states that none of the church members recall seeing any visitor from USCIS.

The petitioner does not submit a new lease agreement with [REDACTED] but provides photographs dated July 18, 2011 of the signs for the church, indicating that the two organizations still share spaces. The petitioner provides a 2011 schedule; however, the document is not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3).

Counsel asserts that leaving the RFE in the mailbox is not proper service under the regulations, that the mailbox is shared by two churches, and that the petitioner did not receive the RFE. Counsel further asserts that a copy of the RFE was not served on counsel as required by the regulation at 8 C.F.R. § 292.5(a).

The record does not indicate the hour of the day that the IOs visited the petitioner's premises and thus whether the visits occurred during the periods that the petitioner was authorized to use the church. Additionally, there is nothing in the record to indicate that the petitioner or counsel received a copy of the IOs RFE.

Accordingly, the director's determination that the petitioner has not established that it is a bona fide nonprofit religious organization is withdrawn. The record does not, however, establish that the petitioner has successfully completed a pre-approval inspection.

The second issue presented is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as “an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.” Additionally, the regulation defines minister as an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

Finally, the regulation at 8 C.F.R. § 214.2(r)(10) requires that, if the alien is a minister, the petitioner must submit:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any, and

(D) The alien's completion of the denomination's requirements for ordination.

In its March 22, 2010 letter, the petitioner stated that in the proffered position, the beneficiary "will be acting solely in carrying out the duties of a Pastor." The petitioner further stated that after serving as a lay minister for several years, he "was ordained by the convention [REDACTED] [REDACTED]. He has since been a pastor of several Assembly of God parishes throughout Brazil . . ." The petitioner submitted a copy of the June 8, 1999 certificate of ordination for [REDACTED] the petitioner's pastor and the official who signed the petition on behalf of the petitioner. The petitioner did not submit evidence of the beneficiary's ordination.

In an RFE dated February 7, 2011, the director instructed the petitioner to submit documentation in accordance with the above-cited regulation to establish that the beneficiary is qualified for the proffered position.

In response, the petitioner provided a copy of a card from [REDACTED] indicating that the beneficiary was an elder with the church as of 2005. In his April 29, 2011 letter accompanying the petitioner's response, counsel states that the church does not have formal ordination procedures and that the General Presbytery of the Assemblies of God had "issued a formal statement regarding ministry and ordination in the Church." The petitioner provided a document, "Pentecostal Ministry and Ordination" that was copyrighted by the General Council of the Assemblies of God. The document provides an historical perspective of the ministry and ordination within the Assemblies of God Church, and while the document indicates that historically, the terms "elders, overseers, and pastors . . . appear to be essentially equivalent terms, with each term implying some unique aspect of the leader's role," the petitioner submitted no documentation to establish that the beneficiary has been ordained in the petitioner's denomination. Additionally, the document clearly establishes that an elder is a leader in the church; it is less clear that an elder is also an ordained minister eligible to perform the sacerdotal duties of a pastor. As discussed above, the petitioner provided a copy of the ordination certificate for Reverend Sena but provided no similar documentation for the beneficiary.

In denying the petition, the director stated:

The beneficiary's duties include officiating at weddings, funerals and baptisms. However, when evidence pertaining to the beneficiary's "Pastor" position was requested, especially the evidence of ordination, the petitioner submitted a copy of the beneficiary's license as an "Elder" stating that "Pastors," "Overseers," and "Elders" are interchangeable titles for ministers in the Church and that the petitioner's organization does not have formal ordination procedures. However, as the submitted document states, each term implies some unique aspect of the leader's role. As opposed to the claim of no ordination procedures, a Certificate of

Ordination issued by [REDACTED] who uses the title [REDACTED] was previously submitted along with the petition. It is not clearly demonstrated that the beneficiary is entitled to officiate at weddings, funerals and baptisms as a Pastor while the beneficiary has only a license as an Elder and has not been ordained as a Pastor.

On appeal, counsel asserts:

[T]he Service fails to mention that in defense of the Petitioner's assertion that the terms "Elder," "Pastor," and "Overseer" are interchangeable, the Petitioner submitted an August 3, 2009 formal Statement from the General Presbytery of the Assemblies of God regarding ministry and ordination in the Church. In a section of the formal statement called "Titles of Spiritual Leaders," the Assemblies of God not only states the terms "Elder", "Pastor," and "Overseer" are interchangeable, but also gives Biblical justification for the Church's practice of using the titles . . . interchangeably. . . . The Service weakly attempts to counter this fact with the following rebuttal: "However, as the submitted document states, each term implies a unique aspect of the leader's role." First, this statement by the Service does nothing to counter or rebut the fact that the Church officially uses the terms . . . interchangeably. Second, by stating "leader's role" the Service is inadvertently acknowledging that Elders, Pastors and Overseers are "leader's roles" in the Church. Again, this fact is supported in the above-mentioned statement, which states, "Elders (presbyteros), overseers, and pastors, then appear to be essentially equivalent terms, with each term implying some unique aspect of the leader's role. In every case, however, the terms apply to those set apart as leaders of the church, not to laypersons." . . . Applied to the beneficiary, this is clear evidence that he, as a Church Elder, is a leader in the Church, and not a layman. Thus, the Assemblies of God's own formal statement regarding its own Church doctrine concerning its own Church leadership which clearly states the Church's titles of Elder, Overseer and Pastor are synonymous is infinitely more convincing than the Service's feeble attempt at arguing that the Assemblies of God does not use the terms Elders, Overseers and Pastors interchangeably. [Italics omitted.]

Counsel's arguments are not persuasive. First, the formal statement is an historical perspective of ministry and ordination in the church. Counsel ignores this historical perspective when he asserts that the church considers the terms pastor, elder and overseer as synonymous. A more complete and contextual reading of the document is as follows:

Pastors, Overseers, and Elders. The term *pastor*, found only in Ephesians 4:11 [in English translation], is the Greek *poimēn* and means "shepherd." The shepherding role (verb, *poimainō*) is often attributed to Christian ministers (Acts 20:28; 1 Peter 5:2), following the model of Christ himself (John 10:14; Hebrews 13:20; 1 Peter 5:4).

Two somewhat interchangeable terms used for pastoral leadership roles in the Early Church are *overseer* (*episkopos*) and *elder* (*presbyteros*). Note that Paul told the “elders” of Ephesus (Acts 20:17ff.) that the Holy Spirit had made them “overseers” (*episkopos*) to “shepherd,” i.e. “pastor” (*poimainō*), the church of God. The two terms appear to be synonymous also in Titus 1:5-7 where Paul spoke of the appointment of “elders” and gave the qualification of “overseers.” *Elders*, *overseers*, and *pastors*, then, appear to be essentially equivalent terms, with each term implying some unique aspect of the leader’s role. In every case, however, the terms apply to those set apart as leaders of the church, not to laypersons.

As to derivation, *overseer* (*episkopos*) emphasizes the function of leadership or supervision. The verb is commonly rendered by such terms as “see to it,” “care for,” “oversee,” and “see after.” *Elder* (*presbyteros*) signifies greater age, hence greater wisdom and more extensive experience, and was a common title for Jewish civil and religious leaders. Ministries encompassed by these terms may well include the spiritual gifts of “leadership” (*proištēmi*) (Romans 12:8) and “administration” (*kybernēsis* (1 Corinthians 12:28).

Applying biblical leadership roles to the modern era, we conclude that pastors carry out the functions of elders and overseers in the local congregations. Teaching and preaching of the Word lie at the heart of their ministry of building up the body of Christ and fulfilling the Great Commission. [Italics in the original.]

Thus, the document on which counsel relies reveals that historically, the terms elder, overseer and pastor “appear to be essentially equivalent terms.” The document indicates that in the “modern era,” the roles of elder and overseer has been incorporated into the position of “pastor,” a term rarely used in the historical context. The document does not discuss the role of “elder” in the modern church.

Counsel seeks to further “clarify” his argument on appeal, stating that the Assemblies of God recognizes “three classifications of ministry that are recognized and transferable among all Assemblies of God districts: the ordained minister, the licensed minister, and the certified minister,” all of which are authorized to perform the sacerdotal functions of the church. The petitioner provides a copy of Article VII from the Minutes of the 53rd Session of The General Council of the Assemblies of God regarding the ministry of the church. Section 1 describes “ministry” and states that it includes “apostles, prophets, evangelists, pastors and teachers . . . exhorters, administrators, leaders and helpers” It outlines four classifications of ministry: ordained, licensed, and certified who are “authorized to perform the ordinances and ceremonies (sacerdotal functions) of the church, and a local church credential, the holder of which can perform sacerdotal duties with written permission from the local senior pastor. The document also outlines the qualifications for becoming a minister within the church. The document does

not refer to any position of “elder” and the petitioner provides no other information about the modern use of the term “elder” within its denomination.

Counsel asserts that as the beneficiary is a licensed elder, he is authorized to perform the sacerdotal duties of a minister. With only a partial copy of the Minutes, the AAO cannot conclude that Article VII encompasses all of the licensed positions within the church. Even if we accept counsel’s argument as true, it is inconsistent with the petitioner’s assertion that the beneficiary was ordained by the convention of the Assembly of God in Brazil.

The petitioner has provided insufficient documentation to establish that the beneficiary is qualified for the proffered position.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.